

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re ACCREDO HEALTH, INC.
SECURITIES LITIGATION

This Document Relates To:

ALL ACTIONS.

) Civil Action No. 03-2216-BBD
)
) CLASS ACTION
)
) LEAD PLAINTIFFS' MOTION *IN*
) *LIMINE* NO. 7 TO PRECLUDE
) EVIDENCE AND ARGUMENT
) RELATING TO ANY NON-
) PARTY'S PROPORTIONATE
) LIABILITY

Lead Plaintiffs, Louisiana School Employees' Retirement System ("LSERS") and Debra Swiman ("Lead Plaintiffs") and the Class of investors who purchased Accredo stock between June 16, 2002 and April 7, 2003, respectfully ask the Court to prohibit Defendants from offering evidence or argument relating to any non-party's proportionate liability.

Under the Private Securities Litigation Reform Act of 1995 ("PSLRA"), a defendant is jointly and severally liable for knowingly disseminating false or misleading statements which caused a plaintiffs' damages. However, in cases where the fact-finder determines that the false and misleading statements were made with reckless disregard, the PSLRA provides for proportionate liability. § 78u-4(f)(8); *In re Cendant Corp. Litig.*, 264 F.3d 201, 237 & n. 19 (3d Cir.2001), *cert. denied sub nom. Mark v. Cal. Public Employees' Retirement Sys.*, 535 U.S. 929, 122 S.Ct. 1300, 152 L.Ed.2d 212 (2002); *Greebel v. FTP Software, Inc.*, 194 F.3d 185, 200 (1st Cir.1999).

In either case, if the defendant has claimed that a third party has caused or contributed to the loss incurred by the plaintiffs, the court: "shall instruct the jury to answer special interrogatories...concerning –

- (1) whether such person violated the securities laws;
- (2) the percentage of responsibility of such [third party], measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and
- (3) whether such person knowingly committed a violation of the securities laws."

Here, despite discovery requests, Defendants have refused to identify any third parties that could be proportionately liable. Accordingly, Defendants should be prohibited from offering evidence or argument relating to any non-party's proportionate liability. Additionally, the jury should be instructed that there are no other parties that they can assign fault to under the PSLRA other than defendants Accredo Health, Inc., David D. Stevens, and Joel R. Kimbrough.

Dated: September 8, 2008

Respectfully submitted,

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